

**Town of Milford
Zoning Board of Adjustment
Case #2015-13
Michael & Sherry Flynn
Variance**

Present: Zach Tripp, Chairman
Fletcher Seagroves
Michael Thornton
Joan Dargie
Kevin Johnson

Excused: Katherine Bauer – Board of Selectmen’s representative
Len Harten, Alternate

Secretary: Peg Ouellette

The applicants, Michael & Sherry Flynn, the owner of Map 39, Lot 16, located at 31 Crosby Street, in the Residence A District, is requesting a Variance from Article V, Section 5.02.4:A, to be able to subdivide a lot with less than the required 15,000 square feet.

Minutes Approved on August 20, 2015

Zach Tripp, Chairman, read the notice of hearing into the record as well as the list of abutters. Applicants were present. No abutters were present. He then invited the applicant forward to present the case. Earl Almy, realtor with Keller Williams, was present, representing the applicants. He and Mr. Flynn came forward.

E. Almy said the Flynn’s were trying to get a variance to have an abutting lot and split up the property they have for an additional home.

Z. Tripp asked him to describe what they want to do and how, and then read the application into the record.

E. Almy said lot has 200 ft. of frontage. Looking to keep existing lot at 15,000 SF and get adjacent lot approved at a little over 10,000 SF. It has all necessary setbacks, side and front, and has large back yard. They referred to sketches of other properties, one at Westview with a 2-bedroom home at 28x44 ft. and another of a ranch-style home of 39 x 25 ft., which is a 3 bedroom home currently on a nonconforming lot in West Meadow. In the footprint of the proposed lot, they referenced those types of homes that could be placed there. He noted Bill Parker’s comment on the application: “*The proposed subdivision of Lot 39/16 into a 15,000 SF lot and a 10,050 SF lot remains consistent with the immediate neighborhood*” and Mr.

Almy noted that Bill Parker also referenced three lots to 11,326 and two other lots. Referring to the pictures, Mr. Almy noted Crestview Nursing Home across the street. One of the things they feel supports this application is that the home sits primarily to the left, leaving a very large open area to the right for the proposed lot.

Z. Tripp asked for questions from the Board. There were none. He opened the meeting for public comment. There were none. He closed the public portion of the meeting and read into the record a letter received by e-mail from Bill Parker, Community Development Director/Zoning Administrator, dated August 3 in response to Joan's question regarding a drainage easement on the portion of the property that would be the new subdivided lot. *"Throughout the more urbanized portion of Town there are several locations where Residence A lots have drainage easements, including several lots along Crosby Street, Ridgefield Drive, the "Hilton Homes" neighborhood of Millbrook, Valhalla, and Briarcliff Drives, and the "Sunview Homes" neighborhood farther to the west of Hilton Homes. Not all of the easements are shown on the tax maps however. I've attached two items – the first attachment consists of two exhibits, A and B, which I delineated the setbacks on the proposed Flynn lot and added the footprints of two homes currently in for building permits and will be built at the new West Meadows Subdivision off West Street. Both footprints fit within the 'building envelope' as shown. The second attachment is a copy taken from the Hilton Homes subdivision plans and on this I outlined drainage easements that exist on lots that are just further to the west of the proposed Flynn subdivision. All these lots have existing single-family homes. If the question posed by Joan relates to whether or not a home could be built on the proposed new Flynn lot, the attachments indicate that it is definitely possible conforming with required setbacks and the drainage easement. Zoning Board – if you have any further questions prior to the Thursday night hearing, please let me know. Bill Parker, Community Development Director/Zoning Administrator."*

J. Dargie said, for clarification, it was a 20 ft. easement front to back on the property. She wanted to make sure it would fit in with what applicants wanted to do.

Z. Tripp asked for application to be read into the record.

E. Almy read the application:

1. Granting the variance would not be contrary to the public interest because:

The spirit of the ordinance would be observed and would ensure that a house constructed on second lot would not be too near abutting homes.

2. The use is not contrary to the spirit of the ordinance because:

Setbacks would be met and frontage would be met. A home of like style could be built and maintain the style of properties in the neighborhood.

3. Granting the variance would do substantial justice because:

There is no public benefit gained that would outweigh the benefit to the owner.

4. The proposed use would not diminish surrounding property values:

A residential building lot in this case would not diminish and is large enough to easily allow for a home similar to others in the neighborhood.

5. Denial of the variance would result in unnecessary hardship.

A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The minimum frontage and setbacks would be met and the lot with a similar home to others in the neighborhood would still allow both lots a spacious yard in this residential/commercial zone. The existing lot home has more than adequate area to support existing use.

ii) and; The proposed use is a reasonable one because:

It allows a single family home to be built on a residential lot that is consistent with other homes and previous variances allowed.

Z. Tripp proceeded to discuss the criteria for a variance.

1. Would granting the variance not be contrary to the public interest?

K. Johnson – not sure this variance would not be contrary to the public interest. Ordinance is specifically to control density within neighborhoods. That part of the public interest, granting this variance introducing an additional house unit would be contrary to the public interest.

F. Seagroves – knows what Kevin is saying. For Residence A, the intent is to provide low density. Looking at other houses they are all about the same as what would happen if they allow this. His major concern, he did research on sizes of the lots and couldn't find anything that made sense. He went onto GIS site which said lot was 3.5 and next lot was 3.5, but they aren't the same size in the picture. He wonders if the property has been surveyed and probably won't be prior to getting subdivided. He's leery of how to do this. Grant by these figures?

Z. Tripp said they have to evaluate the application that is in front of them.

E. Almy said it is 5.75.

Z. Tripp said that is in the application.

There was brief discussion regarding discrepancies.

F. Seagroves felt for the record they should state the lot is a little more than half an acre. Half an acre is 21,000 SF. He came up with about 27,000 SF.

Z. Tripp said application states .525, which is 25,052 SF.

F. Seagroves said all figures are a little different. He would say it was not contrary to public interest.

M. Thornton – it is not contrary. He is concerned, not as much, not to actual sq. ft., but to appropriate appearance of size to keep density as intended. With a large field to one side it tends to balance things out. It is not contrary to the public interest.

J. Dargie was leaning toward Kevin's point but changed her mind. She drove around the neighborhood. The thing that works is the 100 ft. of frontage. If it was 50 Ft. that would make density seem more. It is busy area and street. Only thing contrary to public interest would be another curb cut and that would cause problems on Crosby St. She doesn't think it will make it any denser.

Z. Tripp said granting would not be contrary to the public interest because it would not to a marked degree violate the objective of the zoning ordinance, which is to control density, because it still has the required frontage, Both lots have the 100 ft. You are not getting more houses per linear feet of lot. Similar style of houses to others and maintaining setbacks. He doesn't think that would violate the zoning ordinance or change essential character of the neighborhood.

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes. Spirit is to control density. Looking at running linear feet, it is controlled. They could put house that observes all setbacks and still have a reasonable size house.

J. Dargie agreed, spirit of the ordinance is observed for reasons stated in her last response.

F. Seagroves – yes, he doesn't see any health, safety or general welfare concern to community. Looking at map, another house is in line with other houses on street. Spirit of ordinance is observed.

K. Johnson disagreed with majority. It doesn't comply with spirit. Handbook states that spirit is observed "*in general the provisions must promote the health, safety, or general welfare of the community.*" "*This requires that the effect of the variance be evaluated in the light of the goals of the zoning ordinance*" and as stated in 5.02 it says the intent is to provide low density or low intensity, primarily single-family residences. Creating an additional lot below required space would increase the density.

Z. Tripp said they could grant and be within the spirit. The spirit is low density, low intensity. Disagrees with Kevin because he thinks they can maintain those and still have 100 ft. of frontage on that lot. It won't make that street overly dense. As Joan stated, if the frontage were smaller or violating other setbacks, he might feel differently.

3. Would granting the variance do substantial justice?

K. Johnson – probably most difficult criteria. In this case, balancing loss to the individual against gain to the public, he thinks it would do substantial justice.

F. Seagroves agrees with Kevin. The loss to the individual is not outweighed by gain to public.

J. Dargie agrees loss to the individual not outweighed by public gain.

M. Thornton – because there are other houses in immediate area in the same region of space and with the setbacks and frontage take care of, he feels it would do substantial justice.

Z. Tripp agrees, he doesn't think public would gain anything that would outweigh loss to the applicant.

4. Could the variance be granted without diminishing the value of abutting property?

J. Dargie doesn't think it will diminish value of other properties.

M. Thornton doesn't believe it would.

F. Seagroves –no

K. Johnson agrees.

Z. Tripp agrees with board. It is in line with the rest of the neighborhood. Same frontage and setback which is consistent with rest of the houses. No diminishing of values.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Johnson doesn't think enforcement would create a hardship based on the uniqueness requirement of the variance. There is nothing unique about this property among its neighbors. It is neither larger than nor smaller than others. Other than that house is set to the side and the lot is divisible because of that, nothing else makes it unique. There are large lots in there. Considering cumulative effect if all large lot decided to subdivide. It doesn't meet uniqueness.

Z. Tripp read rest of the requirement regarding special conditions of the property (A), no fair and substantial relationship between general public purposes of the ordinance and specific application to this property (i), the proposed use is a reasonable one (ii). He said Kevin answered no based on special conditions of the property that distinguish it from others in the area.

Kevin said he would answer B, the proposed use is a reasonable one.

Z. Tripp asked about B, if the criteria in A not established, an unnecessary hardship will be deemed to exist.

K. Johnson said re owing to special conditions, he sees no special conditions to this property.

F. Seagroves – re A, all these houses seem to have probably needed a variance when built. He doesn't know what happened to this lot. Due to layout of the lot, it is a hardship. The proposed use is a reasonable one.

M. Thornton – proposed use is a reasonable one and there would be hardship if not granted.

J. Dargie – no fair and substantial relationship exists between not granting variance and public interest. Proposed use is a reasonable one.

Z. Tripp – use, which is 10,052 SF lot is reasonable because it maintains frontage, setback requirements and not inconsistent with existing lots on street and leaves existing lot conforming. Proposed use is reasonable. Re fair and substantial justice, does not believe they can granting full application of the ordinance on this particular property is necessary to promote a valid public interest, for reasons stated in discussion – contrary to public interest and spirit of the ordinance. He believes those two prongs have been met. He has same concerns as Kevin re special conditions. Whether it distinguishes from other property in the area. He read from the Handbook: “*By its basic*

purpose, a zoning ordinance imposes some hardship on all properties by restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exists. Only when some characteristics of the particular land in question makes it different from others can unnecessary hardship be claimed.” The question is what about this property makes it different from the other lots. He looked at lot sizes along Crosby St and on GIS but they seemed inconsistent with the picture. A couple of lots to the east, as noted by Bill Parker, that would be smaller. There are quite a few to the west that appear to be right around .35, all conforming, and few others that look a little small but larger than standard size. Question is, whether having this .525 acre lot is large enough to be a special condition. He doesn’t think it is. Doesn’t think it is overly large that it would be a hardship not to allow subdividing. Just having a house to one side does not make it a special enough condition. He would say no to grounds for hardship. Re B, if criteria in A not met, unnecessary hardship shall be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it, he doesn’t think the variance is needed for reasonable use. Having a .5 acre lot in Res. A is reasonable use. .35 is just the minimal requirement. He says no to B.

Vote on the criteria:

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; K. Johnson – no; Z. Tripp - yes

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes; J. Dargie – yes; K. Johnson – no; F. Seagroves – yes; Z. Tripp - yes

3. Would granting the variance do substantial justice?

J. Dargie – yes; K. Johnson – yes; F. Seagroves - yes; M. Thornton – yes; Z. Tripp – yes

4. Could the variance be granted without diminishing the value of abutting property?

K. Johnson – yes; F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; Z. Tripp - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; K. Johnson – no; Z. Tripp – no

Z. Tripp asked if there was a motion to approve case #2015-13, a request for a variance.

J. Dargie made the motion to approve Case #2015-13

M. Thornton seconded the motion.

Final Vote

J. Dargie – yes; M. Thornton – yes; F. Seagroves – yes; K. Johnson – no; Z Tripp - no

Case #2015-14 was approved by a 3-2 vote.

Z. Tripp informed the applicant his case was approved and reminded him of the thirty (30) day appeal period.